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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,094	06/20/2003	Daniel D. Nemcek	117205-1	9168

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EXAMINER

BALSIS, SHAY L

ART UNIT PAPER NUMBER

1744

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,094

Applicant(s)

NEMCEK, DANIEL D.

Examiner

Shay L Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-15, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on 12/28/04. These drawings are acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 19 recites the limitation "the cleaning members" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 10, 13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schock (USPN 570610).

With regards to claim 1, Schock teaches a wheel cleaner comprising a platform (not labeled but best shown on figure 1 as the area which the entire wheel cleaner rests) and a motor (figure 1, element P) adjacent to the platform. There is at least one drive member (figure 2,

Art Unit: 1744

elements N and O) operably attached to the motor, wherein the at least one drive member is adapted to rotate the wheel when the wheel is positioned on the platform in contact with the drive member (lines 65-80). There is at least one cleaning member (figure 1, elements I, J, L) positioned above the platform to remove debris from each of the inner portion, outer portion and tread portion of the wheel while the wheel is being rotated by the drive member (figure 1).

With regards to claim 3, there is an idler wheel (figure 2, elements N', O') adjacent to each at least one drive member.

With regards to claim 10, the at least one cleaning member comprises a brush.

With regards to claim 13, the number of drive member is two (elements N, O) and each drive member is adapted to rotate a wheel.

With regards to claim 18, the cleaning members are non-rotatable.

6. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Nishina (USPN 6671917).

With regards to claim 15, Nishina teaches a wheel cleaner comprising a platform (figure 1, element 1), a motor (figure 1, element 15) adjacent the platform and at least one drive member (figure 3, element 34(25)). The drive member is operably attached to the motor, wherein each drive member rotates a wheel. There is at least one cleaning member (figure 2, element 22R(22L)) positioned above the platform to remove debris from the tread surface of a wheel while the wheel is being rotated by the drive member.

7. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Nishina (USPN 6671917).

Art Unit: 1744

With regards to claim 15, Kuster teaches a wheel cleaner comprising a platform (figure 3, darkened lines, see figure below), a motor (figure 2, element 11) and a drive member (figure 2, element 8). The drive member is operably attached to the motor and is adapted to rotate the wheel positioned on the platform. There is at least one cleaning member (figure 3, element 14) positioned above the platform to clean the tread of the wheel, while the wheel is being rotated by the drive member.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuster et al. (USPN 3903559) in view of Randrup (USPN 1909869).

With regards to claims 1 and 9, Kuster teaches a wheel cleaner comprising a platform (figure 3, darkened lines, see figure below), a motor (figure 2, element 11) and a drive member (figure 2, element 8). The drive member is operably attached to the motor and is adapted to rotate the wheel positioned on the platform. There is at least one cleaning member (figure, 3, element 14) positioned above the platform to clean the tread of the wheel. Kuster teaches all the essential elements of the claimed invention however fails to teach that the cleaning member cleans the inner and outer surfaces of the wheel as well. Randrup teaches a wheel cleaner comprising a cleaning member for cleaning the inner and outer surfaces of the wheel (figure 3,

Art Unit: 1744

element B, page 2, lines 88-108) located on a plurality of retaining walls. It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the side wheel cleaners of Randrup to the platform of Kuster so that the all sides of the wheel would get cleaned and all the debris would be removed from the wheel.

With regards to claim 2, Kuster teaches that the platform comprises at least one aperture (see figure below).

With regards to claim 3, Kuster teaches an idler wheel adjacent each drive member (see figure below).

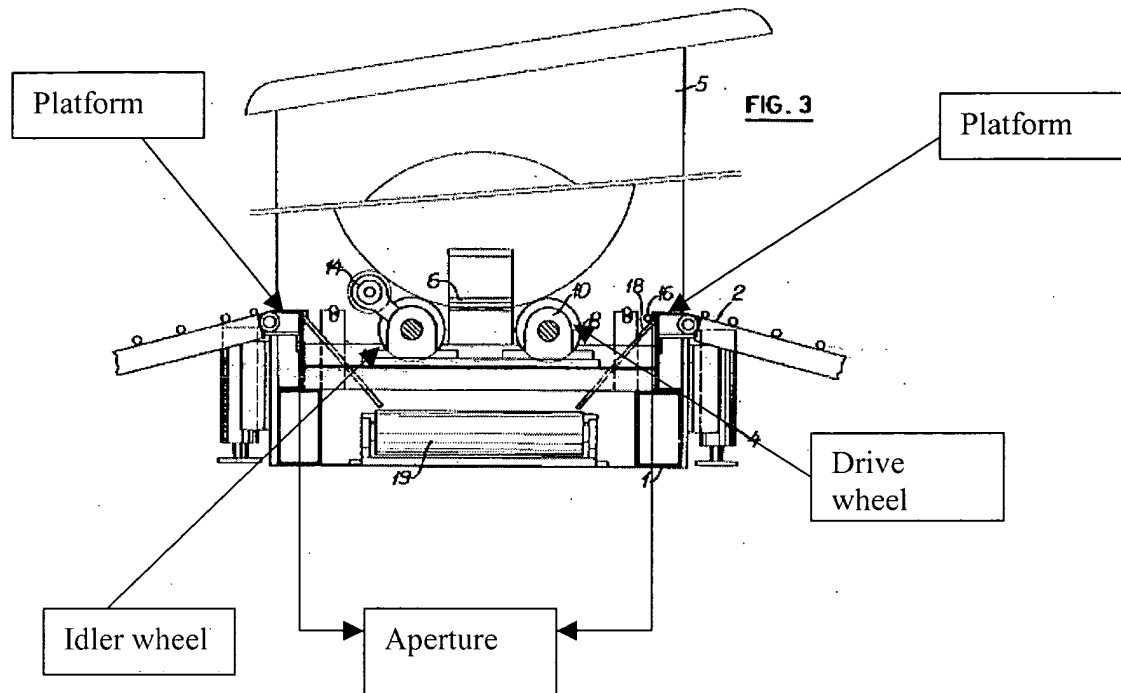
With regards to claims 4-7, Kuster teaches a switch (s1, s2, 104 col. 6, lines 43-47) to turn the motor on and off. The switch may be manually actuated by a hand switch (104) or automatically (s2, col.6, lines 44-64). The switch may be timed (T1-T11) to control the activation.

With regards to claim 8, Kuster teaches a wheel retainer (figure 2, element 21) which keeps the wheel from moving linearly.

With regards to claim 10, Kuster teaches that the cleaning members comprises brushes.

With regards to claims 11-12, Kuster teaches that the platform is elevated by means of ramps (figure 3, element 2).

With regards to claims 13-14, Kuster teaches two drive members, wherein each drive member is adapted to rotate a wheel (figure 2). The wheel cleaner is adapted to clean two wheels simultaneously.



Allowable Subject Matter

10. Claims 16-17 and 20 are allowed.

11. Claim 19 would be allowable if rewritten to overcome the rejection(s) under 35

U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

Claim 16 states that there is one upstanding retaining wall extending upwardly adjacent to at least one wheel rotator. There is a means, affixed to the wall, for removing debris from the inside, outside and tread portion of the wheel simultaneously.

Art Unit: 1744

Claim 17 states that there is a platform with two apertures and three upstanding walls extending around the apertures. There is at least one cleaning member attached to the upstanding walls to clean debris from the wheel.

Kuster and Nishina fail to teach side wheel cleaners and while Randrup teaches side wheel cleaners attached to an upstanding wall, Randrup fails to teach a tread cleaner. Schock teaches a side wheel cleaner as well as a tread cleaner however, only the side wheel cleaners are attached to upstanding walls. Schock also fails to teach a platform with two apertures which are surrounded by three upstanding walls. It would not have been obvious to combine the references to achieve the claimed invention since for claim 16, the combination of references would still lack a tread cleaner, an inner portion cleaner and an outer wall portion cleaner on at least one upstanding wall simultaneously. None of the prior art teaches a tread cleaner located on an upstanding wall. For claim 17, none of the references alone or in combination with each other teach three upstanding walls surrounding apertures formed in the platform, wherein one of the walls has a cleaning member attached to remove debris.

Applicant's Arguments

13. a. Clyne (USPN 4233703) teaches a wheel cleaning apparatus wherein all the brushes are located below the platform level. Clyne teaches a coin operated machine with a rotating brush.
- b. Coley (USPN3729763) fails to teach an aperture or retaining walls. Coley also fails to teach cleaning the tread of the wheel.
- c. Randrup (USPN 1909869) teaches cleaning only and inner and outer portion of the wheel, not the tread, nor does the invention include retaining walls.

Response to Arguments

14. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims so that Clyne, Coley and Randrup are not valid rejections under 102. Clyne does fail to teach brushes above platform level and Coley and Randrup do fail to teach tread cleaners in addition to side wheel cleaners.

The amendment to claim 1 adding the limitation of the a) cleaning member being positioned above the platform as well as the limitation that b) debris is removed from the inner, outer and tread portion of the wheel creates new issues and therefore further search and consideration was necessary.

The amendment to claim 15 adding the limitation of the a) cleaning member being positioned above the platform as well as the limitation that b) debris is removed from the tread portion of the wheel creates new issues and therefore further search and consideration was necessary.

The amendment to claim 16 adding the limitation of the a) at least one upstanding wall extending upwardly as well as the limitation that b) means for removing debris simultaneously from the inside, outside and tread portions of the wheel creates new issues and therefore further search and consideration was necessary.

The amendment to claim 17 adding the limitation of the a) three upstanding walls extending upwardly around each aperture as well as the limitation that b) at least one cleaning member attached to one of the upstanding walls creates new issues and therefore further search and consideration was necessary.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb
5/10/05



GARY K. GRAHAM
PATENT EXAMINER
GROUP ~~1744~~ 1700